IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO: 11523 of 2004

Between:

Smt.Desu Lakshmi Devi @ Desu Lakshimamma W/o D.Sriramulu,
R/o Piyathota, Vempalli, Kadapa District, A.P.,
Now Detenu, Central Prison, Hyderabad.

... PETITIONER

AND

1 The Government of Andhra Pradesh, rep., by its Chief Secretary to

Govt., of A.P., Hyderabad.

2 The Superintendent, Central Prison, State Jail for Women,

Chenchalguda, Hyderabad.

.... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order directions more in the nature of

writ of mandamus declaring the G.O.Rt.No.1235 dated 15-03-2004, of the GENERAL ADMINISTRATION (LAW & ORDER-II) DEPARTMENT issued by the respondent no.1 as illegal, unconstitutional and set aside the same and for a consequential direction to the respondent No.2 to release the petitioner from the prison at Hyderabad or alternatively not considering the oral representation made by the petitioner to the Supdt., Central Prison, Hyderabad on the facts is illegal, arbitrary, discriminatory, violative of Article 21 of the Constitution of India and issue an appropriate writ, order or direction, more particularly one of the nature of writ of mandamus, holding that the action of the respondents is illegal and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.ANGURUNARAYANA RAO

Counsel for the Respondents: ADVOCATE GENERAL

The Court made the following:

<u>O R D E R: -</u> (Per Hon'ble Sri Justice G.Bikshapathy)

This writ petition is filed challenging the order of detention passed by the first respondent-Government in G.O.Rt.No.1235 dated 15.03.2004, General Administration (Law & Order-II) Department, with a consequential direction to the second respondent to release the petitioner from the prison forthwith.

2. The order of detention was passed by the Collector and District Magistrate, Kadapa on 29.01.2004 in Ref.C1/66/M/04 under Section 3(1), (2) r/w Section 2(a) and 2(b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act of 1986 (1 of 1986) (for short "the Act").

3. The order of detention is assailed by the petitioner on the following specific grounds among other grounds raised in the writ petition: -

Firstly, that the detaining authority has considered irrelevant material while passing the detention order, viz., the alleged involvement of the husband and son of the petitioner in Prohibition offences, which is not a condition precedent for invoking the provisions of the Act.

Secondly, in the order of detention, it is stated that there were

many complaints from the residents of Piyathota locality of Vempalli Village against the petitioner and her followers to the effect that they were indulging in sale of I.D Liquor and picking up quarrels with residents of Piyathota locality. There is no material to substantiate this allegation and no documents were also furnished in support of this allegation, and

Thirdly, the detaining authority did not record a finding that there was widespread danger to life or to public health, on account of illicit distillation and transportation of alleged arrack by the detenu.

4. In support of the above submissions, the learned counsel for the petitioner relies on the Judgment of a Division Bench of this Court in **K.Chinnappa Reddy Vs. The District Collector-Cum-District Magistrate and others,** wherein it is held that

> "the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread danger to life or public health. The reports of the Regional Excise Laboratory also do not show that the arrack contains any harmful substance. The order of detention, therefore, deserves to be struck down"

Therefore, he submits that the order of detention is liable to be set aside.

5. In the counter, it is stated that the petitioner and her family members are indulging in illicit distillation of I.D Liquor and transportation thereof and as far as the petitioner is concerned, five cases were booked against her under the Prohibition and Excise Act

and out of the five, in two cases, she was acquitted, and out of the remaining three, one case is pending investigation and in the other two cases, charge sheets were filed and C.C numbers were awaited. With regard to other cases in which the husband and son of the petitioner were alleged to have been involved, it is stated that there were 13 cases booked against them. In some of those cases, they were also acquitted and thus the continued indulgence of the petitioner in transportation of I.D Liquor is injurious to health and therefore the order passed by the detaining authority as approved by the Government is legal and valid and no grounds are made out to interfere with it.

6. Learned Advocate General submits that the detention order was issued under Section 3(2) of the Act as the petitioner has been indulging in possession, purchase, sale and transport of I.D. Liquor in contravention of A.P. Excise Act and A.P. Prohibition Act, 1995, and with a view to prevent her from indulging in such activities which are prejudicial to the maintenance of the public order, the detention order was passed and the Government having considered the detention order, confirmed the same by the impugned order . Thus, there are no illegalities in the order passed by the Government.

7. We have heard the learned counsel for the petitioner and also the learned Advocate General at length.

8. It is not in dispute that the order of detention was passed under Section 3 (1) and (2) of the Act for the alleged illegal activities of possession, purchase, sale and transportation of I.D.Liquor by the petitioner, which is in contravention of A.P. Excise Act and A.P. Prohibition Act, 1995. The question that calls for consideration is whether the detention order is sustainable in law?

9. As far as the petitioner is concerned, she was alleged to have involved in five cases. In two cases, she was already acquitted. The detaining authority has referred to the alleged involvement of her husband and son in as many as 13 cases and out of 13 cases, they were alleged to have been acquitted in 6 cases and some of the cases are pending trial. When it is a case for consideration of the alleged involvement of the husband and son of the petitioner in the prohibition cases, it is not understood as to how the petitioner can be detained. Moreover, it is also stated that there were complaints from the residents of Piyathota locality of Vempalli village against the petitioner and her followers to the effect that they were continuously indulging in the sale of I.D.Liquor and picking up quarrels with residents of Piyathota locality. These two grounds, we consider them to be extraneous to the detention order. The detention order has to be passed basing on the alleged activities of the individual concerned, but it cannot be on the basis of the alleged illegal activities by the third parties. In the instant case, the alleged activities of her husband and son itself are sufficient to set aside the order of detention. Added to this, there is no material placed before this Court to show that there were complaints from the residents of Piyathota locality of Vempally village against the petitioner and her followers. Therefore, when the subjective to satisfaction is recorded without there being any objective consideration of the material and that too relevant material, it vitiates the order of detention. In the instant case under the two instances referred to above are wholly irrelevant considerations for passing the detention order.

10. Under those circumstances, we need not go in to other contentions of the learned counsel for the petitioner that the order is in violation of Article 21 of the Constitution of India viz., that the petitioner cannot be put to double jeopardy and that the order did not state that the activities of the petitioner are of such a nature as to cause widespread danger to life and public health. Under those circumstances, we find that the order of detention, dated 29.01.2004

passed by the Collector & District Magistrate in Ref. No.C1/66/M/04, dated 29.01.2004 as approved by the Government in G.O.Rt.No.608, Dated 09.02.2004 is not sustainable and accordingly we set aside the detention order.

11. In the result, the writ petition is allowed. The order of detention passed by the Collector & District Magistrae, Kadapa in Ref. No.C1/66/M/04, dated 29.01.2004 as approved by the Government in G.O.Rt.No.608, Dated 09.02.2004, is set aside and the detenu namely Smt.Desu Lakshmi Devi @ Desu Lakshumamma W/o Desu Sreeramulu, R/o Piyathota, Vempalli Village and Mandal, Kadapa District, shall be set at liberty forthwith, if she is not required in any other case.

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G.BIKSHAPATHY

Dated 23rd August 2004

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CH.S.R.K.PRASAD

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the Twenty third day of August, Two thousand and Four.

Sd/-

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The Chief Secretary, Government of Andhra Pradesh, Hyderabad.
2 The Superintendent, Central Prison, State Jail for Women,

Chenchalguda, Hyderabad.

3. The Advocate General, High Court of A.P., Hyderabad

4. 2 CD copies.

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